

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Investigation by the Department of Telecommunications
and Energy on its own Motion into the Appropriate Pricing,
based upon Total Element Long-Run Incremental Costs,
for Unbundled Network Elements and Combinations of
Unbundled Network Elements, and the Appropriate Avoided
Cost Discount for Verizon New England, Inc.
d/b/a Verizon Massachusetts' Resale Services in the
Commonwealth of Massachusetts

D.T.E. 01-20

**OPPOSITION OF VERIZON MASSACHUSETTS
TO WORLDCOM'S OBJECTION TO RECORD REQUEST VZ-1**

Verizon Massachusetts ("Verizon MA") submits this response to the January 9, 2002 opposition of WorldCom to Record Request VZ-1 ("Opposition"). For the reasons described below, there is no merit to the Opposition since the information is relevant to the proceeding, readily available and within the scope of cross-examination. Accordingly, the Opposition should be dismissed and the witness directed to file a substantive response.¹

WorldCom and AT&T jointly sponsored the testimony of Richard B. Lee in this proceeding. Mr. Lee testified on the depreciation lives that he contends are appropriate for use in a TELRIC cost model. *See* Exhibits ATT-5, ATT-6 and ATT-7. At the hearing on January 8, 2002, he was asked to provide information about the depreciation practices of his sponsor, WorldCom (Tr. 4, at 313-322). Mr. Lee apparently possesses information that would enable him to answer the questions (*id.*, at 313), but counsel for WorldCom objected to the questions (*id.*, at 314). After oral argument on the issue, the parties agreed that Verizon MA would ask the

¹ If WorldCom believes that the response constitutes proprietary information, Verizon MA has no objection to the information being subject to a Protective Agreement.

questions in the form of a record request in order to afford WorldCom the opportunity to address issues of confidentiality with regard to the responses (*id.*, at 317). Record Request VZ-1 asked Mr. Lee to provide the depreciation practices for local and long-distance operations as reported by WorldCom in its financial reports (*id.*, at 320-322).

In its Opposition, WorldCom states that the information sought is “wholly irrelevant” because the proceeding involves Verizon MA’s forward-looking costs to provide UNEs. According to WorldCom, “information about WorldCom’s network, operations, accounting, financial reporting, etc., is not relevant to the issues to be decided by the Department...” (Opposition, at 1-2). In addition, WorldCom argues that because it did not sponsor the HAI 5.2a-MA model, Mr. Lee should not be required to provide information he has about WorldCom (*id.*, at 2). WorldCom also contends that Mr. Lee should not be required to respond because the information could have been sought in pre-hearing discovery. All of these objections are without merit.

The Department has already ruled that information about the depreciation practices of telecommunications companies (other than Verizon MA) is relevant to the issues that must be resolved in this case. D.T.E. 01-20, *Interlocutory Order of August 31, 2001*, at 12-13. An important set of inputs in the cost models presented in this proceeding is the depreciation rates that are to be applied. This is the reason that both Verizon MA and WorldCom have presented witnesses to establish depreciation rates to be used in the models. The parties clearly disagree about the depreciation rates that should be applied, and the Department has ruled that information about the operations, practices, and costs of telecommunications companies other than Verizon MA is relevant to test the credibility of cost inputs advocated by the parties. *Id.*

Mr. Lee has testified about the depreciation rates that should be used in TELRIC models and has criticized the reasonableness of the inputs used by Verizon MA. In fact, Mr. Lee directly addressed the issue of the depreciation lives reported by WorldCom (as well as AT&T) in his rebuttal testimony (Exh. ATT-6, at 6). Questions about WorldCom's depreciation rates are therefore squarely within the scope of cross-examination. Thus, the depreciation practices of WorldCom, which Mr. Lee has been asked to provide, would tend to prove or disprove assertions made by Mr. Lee in this case, and, therefore, are relevant in this proceeding.²

Whether WorldCom has sponsored a cost model in this proceeding is not germane to the issue of the relevance of the information in Mr. Lee's possession. Mr. Lee has been sponsored by WorldCom to opine on depreciation rates to be used in a TELRIC study. Record Request VZ-1 clearly falls within the scope of Mr. Lee's testimony filed on behalf of WorldCom, and information about WorldCom bears directly on the credibility of the positions that he has taken for WorldCom in this case.

Finally, there is no basis for the argument that the Record Request is out of order because the information could have, or should have, been sought during the discovery phase of the proceeding. Mr. Lee provided extensive testimony about depreciation rates, and he was properly asked by counsel about the practices of WorldCom in an effort to elicit information that might undermine his direct testimony. That is a proper role of cross-examination, and Mr. Lee was prepared to respond to the questions. Although the Department permits extensive pre-hearing discovery, which can often serve to reduce the need for cross-examination, parties are under no obligation to waive their rights to conduct cross-examination and ask all questions in writing

² The parties have presented testimony about the weight that such information should be accorded, but that issue is an issue for the Department to determine in its final decision, after consideration of all relevant information.

before the start of evidentiary hearings. Whether the questions could have been asked during discovery is of no consequence.³

Accordingly, WorldCom's Opposition to Record Request VZ-1 is without merit and Mr. Lee should be directed by the Department to respond to the request.

Respectfully submitted,

VERIZON MASSACHUSETTS

Bruce P. Beausejour
185 Franklin Street, Room 1403
Boston, Massachusetts 02110-1585
(617) 743-2445

Robert N. Werlin
Keegan, Werlin & Pabian, LLP
21 Custom House Street
Boston, Massachusetts 02110
(617) 951-1400

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³ The argument that the Department's Ground Rules state that record requests "shall not be used as a substitute for discovery" is disingenuous. As counsel for WorldCom is aware, the only reason that the question was posed in the form of a record request was to avoid a lengthy delay during hearings and to provide WorldCom an opportunity to provide legal argument (Tr. 4, at 321).